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March 14, 2022

The Honorable Sarah L. Cave  
Daniel Patrick Moynihan Courthouse  
500 Pearl Street, Room 1670  
New York, NY 10007

**RE:** Monterey Bay Mil. Housing, LLC v. Ambac Assurance Corp.  
Case No. 1:19 Civ. 9193 (PGG) (SLC) (S.D.N.Y.)

Dear Judge Cave:

Pursuant to the Court's March 3, 2022 instruction and in advance of the March 16, 2022 conference, Plaintiffs submit their update on outstanding discovery issues before the Court.

**I. Clark Document Production**

Plaintiffs agreed to review and produce documents responsive to supplemental search terms related to the debt solicitation process, other MHPI projects, and other issues on or around January 5, 2022. These supplemental search terms, which expand on the thousands of Clark Realty Capital LLC ("Clark") documents previously reviewed and produced by Plaintiffs, led to the review of approximately 67,000 additional documents from Balfour Beatty Communities, LLC ("BBC"), Corvias, and Michaels. That review was completed and documents produced on January 13, 2022 and January 21, 2022.

As the Court is aware, Clark sold its interest in its Plaintiff project in September 2021, and Plaintiffs' counsel was not able to access the Clark documents without permission from Clark and its counsel. Plaintiffs' counsel pursued the grant of permission to review and produce the Clark documents responsive to the additional search terms. Although Plaintiffs were initially unable to obtain permission, Plaintiffs began working with Clark's newly-retained counsel, Clare Locke LLP, once that firm began its representation of Clark. On March 2, 2022, Clare Locke authorized Plaintiffs' counsel to review the approximately 25,000 Clark documents which hit on the supplemental search terms. Plaintiffs' counsel has completed its preliminary review of these documents and is finalizing the responsive documents for production and its privilege log for supplementation.



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## II. Unclean Hands Documents

Pursuant to this Court's Order, Plaintiffs have fully disclosed to Defendants all document productions made during the governmental investigations into maintenance issues and property conditions at the Plaintiff projects, and have met and conferred with Defendants' counsel regarding the production of documents relevant to Defendants' unclean hands defenses. Given that the majority of documents produced during governmental investigations were from developer BBC, Plaintiffs, after consultation with BBC and its counsel responsible for these prior productions, proposed a plan to Defendants Jefferies and Ambac for the production of these documents. Plaintiffs maintain their objection to the production of documents provided to government entities to the extent those documents are not relevant to Defendants' unclean hands defenses and can be identified without additional delay. Accordingly, Plaintiffs agreed to produce documents from BBC's productions concerning the Plaintiff projects in this action.

Of the 261,873 documents provided to DOJ and AFOSI, Plaintiffs have determined that 93,260 documents relate to the Plaintiff projects, by limiting the universe of custodians to those that worked on the projects at issue in this litigation. Plaintiffs sent a letter proposal of this plan to Defendants Jefferies and Ambac on March 11, 2022, and provided both a list of proposed custodians and excluded custodians for Defendants' review. Plaintiffs await a response.

We appreciate the Court's continued time and attention to this matter, and look forward to discussing these issues and any raised by the Defendants at the upcoming conference on March 16.

Respectfully submitted,

**BROWN RUDNICK LLP**

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